IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14/08/2003

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.1455 OF 1998

P. Subban,
242, Indra Nagar,
Tirumani village,
Chingleput. .. Petitioner

-Vs-

H.T.L. Limited,
rep. by its Manager Administration,
Guindy, Chennai 600 032. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.K. Chandru
Senior Counsel for
Mr.D. Hari Paranthaman

For Respondent : Mr.Sanjay Mohan for
M/s.Ramasubramaniam
Associates

:J U D G M E N T

The petitioner has filed the writ petition for issuing writ of Certiorarified Mandamus to quash the order dated 13.1.98. Under the said order, the respondent had accepted the application of the petitioner for voluntary retirement.

2. The petitioner was employed under Hindustan Teleprinters Limited. A voluntary retirement scheme was introduced by the respondent on 5.11.1997 under which the employees who had completed 10 years of service or 40 years of age were eligible to seek voluntary retirement. The management had, however, reserved the right to either accept or reject the applications for voluntary retirement. The petitioner filed application dated 2.1.98 for voluntary retirement. However, a few days thereafter, he intimated the Union that he wanted to withdraw the application seeking for voluntary retirement and the matter was taken up by the Union on his behalf on 5.1.98. A formal

letter dated 7.1.98 was also submitted by the petitioner before the respondent withdrawing the earlier application dated 2.1.98. However, on 13.1.98, without considering the letter regarding withdrawal of voluntary retirement, the application for voluntary retirement was accepted by the management and subsequently the petitioner was relieved from the services on 12.2.98. The said order has been challenged in the present writ petition.

3. The petitioner has contended that since the offer for voluntary retirement had been withdrawn by him prior to its acceptance by the management, subsequent order of the management was illegal and without jurisdiction.

4. A counter affidavit has been filed initially on behalf of the respondent refuting the allegations of the petitioner. It is indicated that as per the scheme, once application for VRS has been made, could not be withdrawn even though discretion was with the management either to accept or reject such application, but there was no discretion with the employee to withdraw such offer of voluntary retirement. It has been indicated that even though request had been made for withdrawal of the offer for voluntary retirement, the management thought it fit to accept the voluntary retirement.

5. Subsequently, a further affidavit has been filed on behalf of the respondent indicating that even though the respondent was a Government of India undertaking at the time of filing of the writ petition, subsequently it has been privatised, and therefore, the respondent has ceased to be an authority within the meaning of Article 12 of the Constitution and no writ can be issued for the purpose of enforcing the so called right of employment. A further affidavit has been filed indicating that the age of retirement has been reduced from 60 to 58.

6. Learned counsel appearing for the petitioner has relied upon a decision of the Supreme Court reported in 1976 (I) LLJ 274 (ROHTAS INDUSTRIES LIMITED AND ANOTHER v. ROHTAS INDUSTRIES STAFF UNION AND OTHERS) in support of his contention that a writ would be maintainable even against a person depending upon the facts and circumstances of a particular case. The observation in the aforesaid Supreme Court decision is to the following effect :-

 10. The expensive and extraordinary power of the High Courts under Article 226 is wide as wide as the amplitude of the language used indicates and so can affect any personeven a private individual-and be available for any (other purpose) even one for which another remedy may exist. The amendment to Article 226 in 1963 inserting Article 22 6(1A) reiterates the targets of the writ power as inclusive of any person by the expressive reference to the residence of such person. But it is one thing to affirm the jurisdiction, another to authorise its free exercise like a bull in a China shop. This Court has spelt out wise and clear restraints on the use of t his extraordinary remedy and High Courts will not go beyond those wholesome inhibitions except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate. The mentor of law

is justice and a potent drug should be judiciously administered. Speaking in critical retrospect and portentous prospect, the writ power has by and large been the people's sentinel on the qui vive and to cut back on or liquidate that power may cast a peril to human rights. We hold that the award here is not beyond the legal reach of Article 226, although this power must be kept in severely judicious leash. . . .

7. Learned counsel for the petitioner has also placed reliance upon the decision reported in 1996 (I) LLJ 253 (P. KARUTHUMAYAN v. REGIONAL MANAGER, STATE BANK OF INDIA, MADURAI AND ANOTHER), wherein it has been observed as follows :-

 8. It is true that normally, the remedy for the appellant is to raise an industrial dispute under the provisions of the Industrial Disputes Act. The only question for consideration under the first point is as to whether we will be justified or it would accord with the principles of justice to direct a person like the appellant, to approach the Labour Court under the Industrial Disputes Act after retaining the writ petition filed by the bank, for a period of ten years. If the facts were in dispute probably the lapse of considerable time would not have weighed much because, the Court in exercise of jurisdiction under Article 226 of the Constitution of India would not go into the disputed questions of fact. Therefore, we are of the view that as the facts necessary for deciding the validity of the order dt. April 1 , 1982, are not in dispute and as on today more than 12 years have elapsed, in the interest or justice and also to ensure that the relief, if any entitled to by the appellant, should have it at the earliest. We accordingly, answer the first point in the affirmative.

8. Learned counsel for the respondent on the other hand has relied upon an order passed by a learned single Judge of this Court in W.P. No.14425 of 1995 dated 19.7.2002, wherein the writ petition had been filed against the present respondent while it was a Government undertaking. The entire order is to the following effect :-

 . . . In view of the fact that the respondents-company has been Privatised, no Writ will lie against it, which is not controverted by the petitioner. This Writ Petition has therefore become infructuous and the same is disposed of as such. The petitioner is at liberty to pursue such remedy as is available to him in law. . . .

9. Learned counsel for the petitioner has submitted that the aforesaid order was passed practically on the concession made by the counsel for the petitioner and does not lay down any inexorable principle of law that in no case such a writ would be maintainable.

10. Even assuming that the aforesaid decision would not be applicable and a writ would be maintainable, I do not think that the present case is a fit case where a writ should be issued after privatisation of the

respondent. As observed by the Supreme Court, the High Courts should keep in mind the wise and clear restraints spelt out by the Supreme Court on the use of extraordinary remedy and will not go beyond those wholesome inhibitions except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate.

11. In the present case, the acceptance (even assuming that it was illegal acceptance) for voluntary retirement of a particular employee cannot be characterised as leading to such a monstrosity so as to exercise power under Article 226 against a private organisation, which is clearly beyond the ordinary purview of Article 226. Even though in many cases it has been held that writ of Mandamus would be maintainable even against a private person, such cases relate to question of enforcement of public duty.

12. Having regard to all these aspects, I think it is a fit case where a writ can no longer be issued in view of the changed circumstances, namely privatisation of the respondent. Therefore, I follow the course adopted in the similar Writ Petition No.14425 of 1995 dated 19 .7.2002 and observe that the writ petition is no longer maintainable. The writ petition is accordingly disposed of as not maintainable leaving it open to the petitioner to workout his remedy before the appropriate forum. No costs.

Index : Yes
Internet : Yes
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To
H.T.L. Limited,rep. by its Manager Administration,
Guindy, Chennai 600 032.

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